IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

CYNTHIA W., Appellant, v. ARIZONA DEPARTMENT OF ECONOMIC SECURITY, SARAH W., and DAVID W., Appellees.	2 CA-JV 2007-0037 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17613400

Honorable Terry L. Chandler, Judge

AFFIRMED

Jacqueline Rohr
Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
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E C K E R S T R O M, Presiding Judge.

¶1 Cynthia W., mother of Sara W. and David W., challenges the juvenile court's order terminating her parental rights on the grounds of neglect; inability to parent due to chronic substance abuse; and court-ordered, out-of-home placement for nine months or longer. *See* A.R.S. §§ 8-533(B)(2), (B)(3), (B)(8)(a). Cynthia asserts that the Arizona

Department of Economic Security (ADES) failed to use diligent efforts to provide her with appropriate reunification services. She also contends there was insufficient evidence that she had substantially neglected or wilfully refused to remedy the circumstances that caused the children to remain out of the home, that she had neglected the children, and that termination of her parental rights was in the children's best interests.

Facts and Procedural Background

¶2 We view the evidence in the light most favorable to upholding the juvenile court's ruling. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). In early December 2005, Child Protective Services (CPS) received a report that Sarah had missed twenty-nine days of school, had been tardy fifteen times, and was "dirty" when she did attend school. CPS investigated these allegations, visited the home several times, and discovered it was in "deplorable" condition. The apartment was unkept, and the electricity had been turned off; there was rotten food in the refrigerator; and the family was on the verge of eviction. On one visit, "five young men" left the apartment "the minute" they saw the investigator. Cynthia told the investigator that the men were merely acquaintances, but she also claimed she could not keep them out of the home.

¶3 Cynthia told the CPS investigator that she had Parkinson's disease and a heart condition[1] and that Sarah had missed a lot of school because Cynthia was physically unable

[1]In June 2004, CPS had received an unsubstantiated report that Cynthia had been hospitalized due to a heart attack, that "she had made arrangements for people to care for the children" at that time, but "those people could no longer care for them." Cynthia later

to get her there. Cynthia denied she was a regular drug user, but admitted she had used cocaine. The investigator asked Cynthia to submit to a drug test, but Cynthia did not comply. Later, at the preliminary protective hearing in January 2006, the juvenile court ordered Cynthia to submit to urinalysis testing, and Cynthia tested positive for marijuana, cocaine, and methamphetamines.

¶4 In an initial effort to avoid removing the children from the home, CPS referred the case to "Family Builders," a program the CPS investigator described as providing assistance with "utilities, clothing, substance abuse treatment, [or] whatever the family needs." In late December 2005, however, Family Builders determined it could not work with the family because the family was being evicted from their apartment and had no place to live. CPS also received a report that Cynthia was smoking crack cocaine. The CPS investigator told Cynthia that CPS would remove the children unless she made appropriate arrangements for them. The investigator also told Cynthia that she had spoken to Cynthia's relatives in Massachusetts, and they were willing to take the children. Cynthia failed to make arrangements for the children, and CPS removed them from the home on December 29, 2005.

¶5 CPS filed a dependency petition on January 4, 2006. At the preliminary protective hearing, the juvenile court found that, notwithstanding CPS's appropriate efforts

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testified at the severance hearing that she did not, in fact, have Parkinson's disease. She claimed she had been misdiagnosed as having the disease, and the medicine she had been prescribed for it had made her sick.

to keep the children in the home, the children had to be removed because Cynthia did not have safe housing for them, and she had admitted recent cocaine use. Cynthia failed to appear at the contested dependency hearing, and the juvenile court adjudicated the children dependent as to her on February 6, 2006.[2] At the dependency disposition hearing, the juvenile court "affirm[ed] the tasks and services in the . . . written case plan as necessary and appropriate to achieve the case plan goal of reunification." Under the plan, Cynthia was expected to:

> observe one full session of drug court; to complete and follow through with the recommendations of a referral made to Arizona Families First for substance abuse assessment; to participate in random drug testing; to work with a parent aide to develop . . . improved home and management skills; to resolve any legal issues that she may have had; to stay in touch with the case manager; sign any release forms . . . so that the Department could receive records; and to obtain safe and appropriate housing for herself and the children; and to complete a psychological evaluation, and follow any . . . recommendations made.

¶6 Cynthia was offered services through COPE Behavioral Health (COPE). Following a meeting with a COPE case manager, her supervisor, and the COPE director, it was "decided that [Cynthia's] substance abuse problem was such that she needed residential treatment." Initially, Cynthia agreed "she would go through and participate in intensive out-patient treatment, which meant her attending meetings five days out of the week until a bed

[2]The whereabouts of the children's reputed fathers was unknown. The children were adjudicated dependent as to their fathers on March 15 and April 5, 2006, following service on the fathers by publication.

became available at an in-patient treatment facility." On April 21, 2006, CPS organized a "Family Group Decision Making" meeting to facilitate a family decision about what would be in the best interests of the children. Cynthia's four sisters and one brother-in-law traveled from Massachusetts and attended the meeting. The family, including Cynthia, decided the children would move to Massachusetts to live with their maternal aunts while Cynthia participated in a residential substance abuse treatment program in Tucson. After the juvenile court received positive home studies on the aunts' residences, it placed the children with them in Massachusetts in early June 2006.

¶7 Cynthia failed to participate in services offered to her in Tucson. She attended the group but not the individual testing portion of her psychological evaluation. She did not observe a session of family drug court. She did not fully participate in or benefit from services offered to her to improve her parenting skills. She attended only one of her scheduled daily substance abuse group meetings through COPE, telling the CPS caseworker that she did not feel the group was beneficial to her. She discharged herself from COPE on May 12, 2006, after stating she did not want to go into treatment. She also failed to comply with required drug testing. Although Cynthia was ordered to submit to drug testing weekly on Mondays, Wednesdays, and Fridays, she submitted to only one test in Tucson besides the one she took after the preliminary protective hearing.

¶8 Cynthia never found stable housing in Tucson, and despite being informed by the CPS case manager that it would be difficult to provide her with services if she left

Tucson, Cynthia moved to Massachusetts in mid-July 2006. She told the case manager she would enter a residential treatment facility in Massachusetts as soon as she got there; she did not enter a treatment facility until November 17, 2006, and left the next day. Cynthia submitted to some drug testing in Massachusetts, but all of her tests contained positive results for marijuana. Cynthia attended an out-patient drug treatment program for some time in Massachusetts, but at the time of the severance hearing, she was no longer participating.

¶9 After several permanency planning hearings, the juvenile court changed the case plan to severance and adoption, directing ADES to file a motion for termination of Cynthia's parental rights. After a contested severance hearing in April 2007 on ADES's motion, the court terminated Cynthia's parental rights on all three grounds alleged. The court found, inter alia, that the children had been in court-ordered, out-of-home placements for over nine months, and despite ADES's diligent efforts to provide appropriate reunification services, Cynthia had "substantially neglected and wilfully refused to participate in the services in order to remedy the circumstances which caused Sarah and David to be in out-of-home care." The court added: "[Cynthia] really didn't accomplish anything in the case and it was later discovered that she didn't have Parkinson's which she often used as an excuse for her lack of participation." The court also found that Cynthia had neglected the children and that her "history of chronic abuse of dangerous drugs or controlled substances" rendered her "unable to discharge her parental responsibilities" and "reasonable grounds [existed] to believe that the condition will continue for a prolonged

indeterminate period." Finally, the court found that the children were "adoptable," were "placed with relatives committed to permanency for them," and that termination of Cynthia's parental rights was in the children's best interests.

Discussion

¶10 We will not disturb a juvenile court's order terminating a parent's rights unless the order is clearly erroneous. *Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 4, 53 P.3d 203, 205 (App. 2002). We view the evidence in the light most favorable to upholding the factual findings upon which the order is based. *See Michael J. v. Ariz. Dep't of Econ. Sec.*, 196 Ariz. 246, ¶ 20, 995 P.2d 682, 686 (2000). We do not reweigh the evidence, but determine only whether any reasonable evidence supports the court's findings. *Id*. Any statutory ground that is the basis for severance of a parent's rights must be established by clear and convincing evidence. § 8-537(B); *Mary Ellen C. v. Ariz. Dep't of Econ Sec.*, 193 Ariz. 185, ¶ 25, 971 P.2d 1046, 1051 (App. 1999). A juvenile court's finding that severance is in a child's best interests need only be established by a preponderance of the evidence. § 8-533(B); *Kent K. v. Bobby M.*, 210 Ariz. 279, ¶ 41, 110 P.3d 1013, 1022 (2005). We will affirm an order terminating a parent's rights so long as at least one of the statutory grounds has been established by sufficient evidence. *See In re Maricopa County Juvenile Action No. JS-501568*, 177 Ariz. 571, 575, 869 P.2d 1224, 1228 (App. 1994).

¶11 Cynthia does not challenge the juvenile court's finding that the children were out of the home for nine months or longer pursuant to court order. *See* § 8-533(B)(8)(a).

Further, she concedes that "it is clear from the record that [she] did not, or could not, participate in many of the services suggested by ADES while [she was] in Arizona." She contends, however, that there was "no showing" that she "'willfully refused' or 'substantially neglected' to remedy her housing and her use of dangerous drugs as she had obtained both housing and sobriety from dangerous drugs." She also appears to suggest that ADES neither made reasonable efforts to reunify her family nor provided appropriate services to achieve that goal. We disagree.

¶12 Cynthia's argument that she had "obtained both housing and sobriety from dangerous drugs" appears to be based on her testimony at the severance hearing that she had not used cocaine or methamphetamines for nearly one year. However, the juvenile court was in the best position to determine Cynthia's credibility on this issue. *See In re Richard B.*, 216 Ariz. 127, ¶ 12, 163 P.3d 1077, 1080 (App. 2007). The juvenile court commented at the severance hearing that it did not "let parents self-report their use or non use." Moreover, Cynthia's report was not corroborated by any other evidence. The CPS case manager testified she believed Cynthia had not "demonstrated sobriety" and not "moved one inch from the position she [had been] in when the children were removed." Cynthia admitted she had more recently used marijuana, although she claimed the last time she had used it was "around th[e] time" of her last positive drug test. Although Cynthia attempts to minimize her marijuana use by arguing marijuana is not a dangerous drug, she has cited no authority

for that contention, and she overlooks the fact that possession and use of marijuana is illegal. *See* A.R.S. § 13-3405.

¶13 The record is clear that the primary reason the children remained out of the home at the time of the severance hearing was Cynthia's continued drug use, her lack of treatment, and her inability to find suitable housing. The CPS case manager testified she did not know where Cynthia was living at the time of the severance hearing. Cynthia's own testimony established she was living with her boyfriend, a man she had known while she was involved with drugs in Tucson and one of the men the CPS investigator had seen in Cynthia's apartment before the children were removed. The record contains ample evidence supporting the juvenile court's determination that Cynthia had wilfully refused or substantially neglected to remedy the circumstances that caused the children to be in out-of-home placement.

¶14 The record belies Cynthia's claim that ADES failed to provide adequate and appropriate reunification services and that the juvenile court's finding in that regard is erroneous. To show a "diligent effort to provide appropriate reunification services," § 8-533(B)(8), ADES must have provided Cynthia "with the time and opportunity to participate in programs designed to improve [her] ability to care for the child[ren]"; however, it "need not provide 'every conceivable service.'" *Mary Ellen C.*, 193 Ariz. 185, ¶ 37, 971 P.2d at 1053, *quoting In re Maricopa County Juvenile Action No. JS-501904*, 180 Ariz. 348, 353, 884 P.2d 234, 239 (App. 1994).

¶15 At the disposition hearing in March 2006, the juvenile court "affirm[ed] the tasks and services in [Cynthia]'s written case plan as necessary and appropriate to achieve the case plan goal of reunification." At the subsequent dependency review hearing and each of the three permanency planning hearings, the juvenile court found ADES had made "reasonable efforts" toward reunification. When the juvenile court ordered the case plan changed to severance and adoption, it specifically found that Cynthia had

> been offered a full range of reunification services including a psychological evaluation, a substance abuse evaluation and treatment, random urinalysis testing, mental health treatment through a local agency in Tucson, services through a mental health agency in Massachusetts which she sought out herself, a referral for Family Drug Court, supervised visitation, and case management services.

Cynthia challenged none of these findings. Moreover, at the dependency disposition, the juvenile court informed ADES that it was "going to expect a little more hands on [service] with [Cynthia]." The court acknowledged the CPS case manager was doing so "by arranging to take [Cynthia] to her meeting with COPE." ADES also accommodated Cynthia's transportation and health issues by agreeing to allow Cynthia to submit to regularly scheduled, rather than random, urinalysis so that she could arrange appropriate transportation in advance. In its order terminating Cynthia's parental rights, the court found that:

> CPS [had] made more than diligent effort to provide [Cynthia] with appropriate reunification services. Because it was initially believed that [Cynthia] suffered from Parkinson's Disease, she was given more support and assistance than a typical parent in

> a CPS case would receive. The CPS caseworker paid particular attention to trying to assist [Cynthia] with transportation, housing and substance abuse treatment.

These findings and the court's conclusion that ADES made diligent efforts toward reunification are amply supported by the record.

¶16 Cynthia's argument that ADES did not provide appropriate services because it failed to provide her with sufficient visitation is without merit. Cynthia was allowed supervised visitation with the children while they were in Tucson, but she was allowed only one telephone contact and one in-person visit after moving to Massachusetts. The CPS case manager reported on August 31, 2006, that visitation had been suspended based on input from "the Unit consultant, Child Psychologist Elizabeth Wong," who recommended Sarah engage in therapy and that visitation be subject to the therapist's recommendation. At the severance hearing, the juvenile court noted that both children were then in therapy. Given these circumstances, Cynthia's lack of regular visitation with her children in Massachusetts was reasonable. However, even assuming, arguendo, that more visitation could have been provided, Cynthia has failed to explain how the lack of visitation affected her ability or willingness to participate in drug abuse therapy or how it related to her continued drug use, which were at the heart of the court's termination of Cynthia's parental rights.

¶17 Finally, we reject Cynthia's suggestion the record does not support the juvenile court's finding that termination of her parental rights was in the children's best interests. To establish that point, "ADES was required to show that the [children] would

derive an affirmative benefit from termination or incur a detriment by continuing in the relationship." *Ariz. Dep't of Econ. Sec. v. Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d 943, 945 (App. 2004), *citing Jennifer B. v. Ariz. Dep't of Econ. Sec.*, 189 Ariz. 553, 557, 944 P.2d 68, 73 (App. 1997). "The existence of a current adoptive plan is one well-recognized example of such a benefit." *Oscar O.*, 209 Ariz. 332, ¶ 6, 100 P.3d at 945. The CPS case manager testified that the children had "lived a very chaotic lifestyle" while they had been in Cynthia's care; they had "demonstrated the benefits of living in a stable and consistent environment since being placed with their aunts"; the children were "adoptable"; and the children's aunts were considering adopting them. The juvenile court's finding that severance was in the children's best interests is supported by the record.

¶18 Because sufficient evidence supports the juvenile court's termination of Cynthia's parental rights pursuant to § 8-533(B)(3) and (B)(8)(a), we need not address her arguments regarding the other ground upon which the juvenile court also based its order. *See Maricopa County No. JS-501568*, 177 Ariz. at 577, 869 P.2d at 1230. The juvenile court's order terminating Cynthia's parental rights to Sarah and David is affirmed.

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PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

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PHILIP G. ESPINOSA, Judge

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GARYE L. VÁSQUEZ, Judge